**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
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| Federal-State Joint Conference on Accounting Issues | ) | WC Docket No. 02-269 |
| | ) | |
| 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II | ) | CC Docket No. 00-199 |
| | ) | |
| Jurisdictional Separations Reform and Referral to the Federal-State Joint Board | ) | CC Docket No. 80-286 |
| | ) | |
| Local Competition and Broadband Reporting | ) | CC Docket No. 99-301 |

**COMMENTS OF THE**
**UNITED STATES TELECOM ASSOCIATION**

Indra Sehdev Chalk
Michael T. McMenamin
Robin E. Tuttle

Its Attorneys

1401 H Street, NW, Suite 600
Washington, DC 20005
(202) 326-7300

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Pursuant to the Notice of Proposed Rulemaking issued by the Federal Communications Commission (FCC or the Commission)[1] and pursuant to sections 1.415 and 1.419 of the FCC's rules,[2] the United States Telecom Association (USTA),[3] hereby submits these comments on the report issued by the Federal-State Joint Conference on Accounting Issues (Joint Conference) detailing proposed modifications to the FCC's regulatory accounting and related reporting requirements.[4]

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[1] Notice of Proposed Rulemaking (rel. Dec. 23, 2003) (NPRM).
[2] 47 C.F.R. §§1.415 and 1.419.
[3] USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.
[4] *Federal-State Joint Conference On Accounting Issues*, Recommendation by Joint Conference, WC Docket No. 02-269 (rel. October 9, 2003) (Joint Conference Report).

## SUMMARY

USTA believes that the Phase II Order was a step in the right direction toward promoting competition and reducing regulation, primary goals of the Act. The FCC should not take any steps backwards now by reconsidering actions in the Phase II Order to eliminate and streamline certain regulatory accounting requirements or by implementing new accounting requirements. It must continue its efforts to reduce accounting requirements by moving forward with the Phase III of its review. As it moves forward, the FCC must continue to repeal and modify all regulations that are no longer necessary for a federal purpose. The FCC cannot implement or maintain accounting regulations merely because they might be useful to state regulators. In addition, the FCC should focus on tailoring its regulatory accounting requirements to the type of regulation to which a company is subject. As more carriers operate under a competitive market structure, regulatory accounting requirements should give way to GAAP, which can be easily followed by the entire telecommunications industry.

## DISCUSSION

### I. Streamlining Accounting Requirements is in Keeping with the Goals of the Act

Regulatory accounting was established when the only carriers in the telecommunications marketplace were incumbent local exchange carriers (ILECs), and interexchange carriers and all ILECs were regulated on a rate-of-return basis, which involved frequent, long, and detailed rate-case proceedings. Today there are many different types of carriers that make up the telecommunications industry. ILECs face growing intermodal competition from carriers using cable, wireless, and IP facilities. ILECs also face growing competition from competitive local exchange carriers (CLECs) that use unbundled network elements (UNEs) and their own facilities.[5] Despite this growth in competition, ILECs are the only carriers required to follow regulatory accounting requirements. All other carriers are permitted to follow Generally Accepted Accounting Principles (GAAP). Like the rest of the telecommunications industry, ILECs should be permitted to operate under GAAP.

Allowing ILECs to operate free from unnecessary regulatory accounting requirements would be in keeping with the goals of the Telecommunications Act of 1996 (1996 Act) "to promote competition and reduce regulation."[6] It would also be in keeping with Section 11 of the Communications Act of 1934, as amended (Act), which requires the FCC to perform a biennial review of all telecommunications regulations and repeal any regulation that is "no longer necessary in the public interest as a result of meaningful economic competition between providers of such service."[7] Consistent with the requirements of Section 11, the FCC made significant progress toward eliminating unnecessary regulatory accounting requirements in its Phase II Order.[8] The FCC should continue these efforts in Phase III of the proceeding.[9]

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[5] *See* "Local Telephone Competition: Status as of June 30, 2003," Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, www.fcc.gov/wcb/stats (Dec. 2003) (Local Competition Report). In the Local Competition Report, the Commission states that CLECs now serve 26.9 million switched access lines, which is a 9% increase from the first half of 2003, and that these lines constitute about 14.7% of the 182.8 million total switched access lines, compared to 11.4% a year earlier. Of these CLEC lines, about 58% of service is provided over UNEs and about 18% is provided over CLEC's own facilities. The Commission also states that end-user customers are obtaining local telephone service from wireless and cable facilities (*i.e.*, there are 147.6 million mobile wireless telephone service subscriptions and 3.0 million cable-telephony lines).

[6] 1996 Act, Preamble.

[7] 47 U.S.C. §161(a)(2).

[8] *See 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting,* Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, Further

Reversing the progress made in the Phase II Order would be inconsistent with the goals of the Act, as would any decision by the FCC not to move forward with Phase III efforts to reduce regulatory accounting burdens.

## II. The FCC Lacks the Authority to Maintain Regulatory Requirements Solely for the Benefit of the States

When the FCC adopted its Phase II Order, it determined that certain regulatory accounting requirements were no longer necessary for the federal regulatory purposes within FCC jurisdiction.[10] Likewise, other regulatory accounting requirements were not added in the Phase II Order – despite the requests of certain states – because the FCC could find no federal purpose for adding them.[11] This is because the Act specifically limits the FCC's regulatory authority and reach to matters of interstate and foreign commerce in communication,[12] and, more specifically, the Act prohibits the FCC from exercising jurisdiction over intrastate communication service.[13] Furthermore, the FCC, itself, has found that if it cannot identify a federal need for a regulation, then it cannot justify maintaining the regulation at the federal

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Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, CC Docket Nos. 00-199, 97-212, 80-286, and 99-301 (rel. Nov. 5, 2001) (Phase II Order).

[9] Phase III of the Commission's 2000 biennial review of its accounting requirements was initiated by the Further Notice of Proposed Rulemaking that was a part of the Phase II Order.

[10] Phase II Order, para. 1.

[11] *See* Phase II Order, paras. 57-75.

[12] *See* 47 U.S.C. §151 ("For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States . . . communication service with adequate facilities at reasonable charges . . .").

[13] *See* 47 U.S.C. 152(b) ("Except as provided in sections 223 through 227, inclusive, and section 332, and subject to the provisions of section 301 of title VI, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier . . .") .

level.[14] The FCC has addressed the requests of states to implement and maintain accounting requirements that would benefit them in their promotion of local competition.[15] Any further attempt by the FCC to implement or maintain regulations solely for the benefit of the states would be an unauthorized extension of its regulatory power into the state arena. Information that is solely for the benefit of the states must be derived from information gathered by the states or other publicly available sources.

Some commenting in this proceeding will argue that Section 220 of the Act provides the FCC with broad discretion to require other regulatory accounting and reporting standards to implement the goals of the Act, including the authority to adopt accounting regulations that are used primarily, or even exclusively, by the states.[16] USTA contends, however, that Section 220 of the Act does not give the FCC broad discretion to impose accounting requirements to help state regulators do their jobs. Specific statutes[17] and specific findings by the FCC[18] prohibit the FCC from maintaining or implementing regulations solely for the benefit of the states. Under the basic principles of statutory construction, specific statutes preempt general statutes, and Section 220 is a general statute preempted by sections 1, 2(a), and 11 of the Act.[19] The FCC's specific

[14] Phase II Order, para. 207
[15] *Id.*
[16] *See* 47 U.S.C. §220. More specifically, Section 220(i) of the Act states that the "Commission, before prescribing any requirements as to accounts, records, or memoranda, shall notify each State commission having jurisdiction with respect to any carrier involved, and shall give reasonable opportunity to each such commission to present its views, and shall receive and consider such views and recommendations." 47 U.S.C. §220(i).
[17] 47 U.S.C. §§151 and 152(b).
[18] Phase II Order, para. 207.
[19] *See* 47 U.S.C. §§151, 152, and 161(a)(1) and (2), requiring the Commission to "review all regulations issued under this Act" and to "determine whether any such regulation is no longer necessary in the public interest." Consistent with the jurisdictional authorizations and limitations

biennial review obligations found in Section 11, trump the requirements in Section 220(i) that the FCC consider the views and recommendations of the state commissions with regard to accounts, records, or memoranda that the FCC may prescribe. Beyond the matter of statutory construction, there is simply nothing in Section 220 that authorizes or directs the FCC to implement or maintain regulations solely, as a surrogate for state regulatory agencies, for the benefit of the states.

USTA encourages the states to streamline their accounting regulations in a similar manner to the streamlining efforts undertaken by the FCC in the Phase II Order and those still under consideration in the Phase III proceeding. Such action by the states would significantly reduce burdens on carriers. Under no circumstances, however, should the FCC expand its federal accounting regulations to accommodate the specific needs of states. Not only is such action beyond the scope of the FCC's regulatory authority, but it would unreasonably increase regulatory burdens on ILECs, requiring them to provide accounting information in states where no such information has been requested or is needed. Furthermore, increasing regulatory accounting requirements for ILECs solely for the benefit of the states serves no federal regulatory purpose and is contrary to the goals of the Act.

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set forth in Sections 1 and 2(a) of the Act, the Commission does not have authority to implement and maintain regulations that are solely for the benefit of the states.

## III. Regulatory Accounting Requirements that were Eliminated or Streamlined in the Phase II Order Should not be Reinstated or Reconsidered. No New Regulatory Accounting Requirements are Necessary to Support Current Regulatory Efforts and Goals

Consolidation of Accounts

The FCC seeks comment on whether it should make changes to numerous accounting requirements that were eliminated or streamlined in the Phase II Order and whether ILECs should be required to comply with additional accounting requirements. Again, USTA maintains that the strides made in the Phase II Order should not be undone, and the goals of the Act should not be undermined by reinstating accounting regulations that have already been eliminated, by reconsidering and reversing accounting regulations that have already been streamlined, or by imposing additional, new accounting regulations. Specifically, the FCC should not reinstate the following regulatory accounts:

5230 Directory Revenues
6561 Depreciation Expense – Telecommunications Plant in Service
6562 Depreciation Expense – Property Held for Future Telecommunications
6563 Amortization Expense – Tangible
6564 Amortization Expense – Intangible
6565 Amortization Expense – Other

These accounts were eliminated in the Commission's Phase II Order[20] because they did not serve a federal regulatory purpose, and there is no compelling federal purpose for reinstating them now.[21] The Joint Conference concludes that the FCC may reinstate these regulatory accounts to

[20] *See* Phase II Order, paras. 36-38 and Appendix B – List of eliminated Class A accounts (pp. 87-88).
[21] *See* Phase II Order, paras. 36, 38. The Commission noted when it eliminated these accounts that nothing it decided with regard to these accounts "restricts state commissions from receiving these data from carriers when state-specific reasons require them to do so" and that it expected that companies would "provide these records to state commissions, if needed."

meet the needs of the states,[22] but this conclusion ignores the fact that the FCC has no statutory authority to establish rules simply to assist states in applying state law.

The FCC seeks comment on whether to reconsider consolidation of Accounts 6621 through 6623 for call completion services, number services, and customer services into one account, Account 6620 for services, and whether to create wholesale and retail subaccounts for such a consolidated account. Although the FCC originally ordered consolidation of these accounts, along with the wholesale/retail breakdown in the Phase II Order,[23] it subsequently deferred such consolidation and wholesale/retail breakdown.[24] USTA recommends the consolidation of Accounts 6621 through 6623 into Account 6620, but does not recommend implementation of a wholesale/retail breakdown for the consolidated account. Likewise, the FCC should not implement a wholesale/retail breakdown for any of the accounts even if it does not consolidate them. Requiring a wholesale/retail breakdown of Accounts 6621 (call completion services (*i.e.*, operator services)) and 6622 (number services (*i.e.*, directory assistance)) is unnecessary because these services are not required to be offered at UNE rates.[25] Furthermore, requiring a cost allocation of Account 6623 (customer services) (or Accounts 6620, 6621, or 6622) into a wholesale/retail breakdown is not consistent with the FCC's Part 32

[22] Joint Conference Report at 8.
[23] *See* Phase II Order, para. 41.
[24] *See Federal-State Joint Conference on Accounting Issues*, Order, 17 FCC Rcd 23243 (2002) (suspending implementation until July 1, 2003)(First Suspension Order); *Federal-State Joint Conference on Accounting Issues*, Order, 18 FCC Rcd 12636 (2003) (further suspending implementation until January 1, 2004) (Second Suspension Order); *Federal-State Joint Conference on Accounting Issues*, Order, FCC 03-325 (rel. Dec. 23, 2003) (further suspending implementation through June 30, 2004) (Third Suspension Order).
[25] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3892, para. 442 (1999).

accounting rules, is not useful for the states' purposes of developing UNE rates, and would require carriers to duplicate unnecessarily internal operating systems and procedures.

When it ordered in its Phase II Order that the combined Account 6620 should include wholesale and retail subaccounts, the FCC claimed that these subaccounts would "assist the states in developing UNE rates that properly reflect the costs of providing a wholesale service."[26] The reality is that the states already receive detailed studies to assist them in their UNE rate development process, and receipt of wholesale/retail percentage information from Account 6623 (or Accounts 6620, 6621, or 6622) is unnecessary.

Finally, requiring carriers to implement wholesale/retail subaccounts for Accounts 6620, 6621, 6622, or 6623 would require them to either duplicate internal operating systems or to conduct studies as well as to rebook wholesale and retail dollars that have already been journalized. Furthermore, booking an allocation is unnecessary work not required by Part 32 accounting rules. Moreover, there would also be significant costs and lengthy lead times involved in duplicating systems and procedures to implement wholesale/retail subaccounts.

Changing Account Titles

The FCC seeks comment on whether to reinstate the reporting of "sheath kilometers" if it decides to collect local loop facility information as "loop sheath kilometers" on Table II of the ARMIS 43-07 report.[27] USTA urges the FCC to permanently reinstate the account title sheath kilometer and to refrain from making the title change from sheath kilometer to loop sheath kilometer. While it took no position on the addition of loop sheath kilometers in ARMIS Report

[26] *See* Phase II Order, para. 64.
[27] NPRM, para. 5(c).

43-07, the Joint Conference did recommend that carriers continue to report sheath kilometers.[28] The FCC has not identified any federal purpose for reporting loop sheath kilometers. In order to report loop sheath kilometers, carriers would have to conduct manual, labor-intensive reviews of engineering plats to ascertain how the cable in the sheaths is used so that cable that is used for loops could be identified. Carriers' accounting records do not already contain this loop sheath information. At least one USTA member has estimated that the cost of conducting the necessary reviews of the engineering plats would be more than $5.5 million. This is a significant financial outlay when a federal need for the specific loop information has not been identified.

Affiliate Transactions

Regarding the FCC's request for comments on reconsideration of other changes adopted in the Phase II Order, USTA maintains that the FCC should not reconsider any changes adopted in the Phase II Order regarding affiliate transaction rules or any other changes adopted in the Phase II Order. In particular, the FCC should not eliminate the centralized services exception to the affiliate transactions rules, thereby making such transactions subject to the general rule requiring fair market value analysis. The Joint Conference suggests that the exception encourages accounting scandals because it permits a carrier to pay in excess of market prices for services obtained from an affiliate, which it might want to do to manipulate earnings statements.[29] What the Joint Conference fails to mention is that existing affiliate transaction safeguards are in place to ensure compliance with affiliate transaction rules. These safeguards include the annual Cost Allocation Manual (CAM) that is publicly filed with the FCC. The CAM includes a listing of all transactions between regulated and nonregulated companies with a

[28] Joint Conference Report at 31.

description of the service/assest transaction, the name of the nonregulated affiliate who receives or provides the asset/service, the frequency of the transaction, the valuation of the transaction. Furthermore, affiliate transactions are audited by independent auditors. In addition, affiliate transaction dollar amounts, by affiliate, by valuation method, are publicly reported annually to state and federal regulators. Additional audit and public disclosure requirements apply to transactions between regulated and long distance affiliates and between regulated companies and advanced data affiliates. USTA contends that the need for the centralized services exception is, as the FCC has acknowledged, to relieve ILECs from performing fair-market valuations in circumstances in which the burdens of finding a fair market value outweigh the benefits. As FCC Commissioner Kevin Martin notes, in its 1996 rulemaking creating the centralized services exception, the FCC found that the exception would benefit consumers by allowing ILECs to take advantage of economies of scale and scope and eliminating it now may be inadvisable.[30]

<u>Adding Accounts to USOA</u>

Finally, the FCC asks whether it should add the following accounts to the Uniform System of Accounts (USOA): (1) optical switching, (2) switching software, (3) loop and interoffice transport, (4) interconnection revenue (with subaccounts for UNEs, resale, reciprocal compensation, and interconnection arrangements), (5) universal service support revenue, and (6) universal service support expense.[31] USTA urges the FCC not to add these accounts to the USOA. Not only would these additions be contrary to the Act's goal of reducing regulation, but requiring carriers to report this information is unnecessary because the FCC already collects and

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[29] Joint Conference Report at 26.

[30] *See* "Federal-State Joint Conference on Accounting Issues Submits Proposed Modifications to FCC Accounting Rule," Separate statement of Kevin J. Martin, FCC News (Oct. 9, 2003).

summarizes any information sufficient to support regulatory efforts relating to UNE prices, interconnection arbitrations, universal service programs, market share, service quality, and cross-subsidization.

Delay in Implementation of Rule Changes

The FCC delayed implementation of certain modifications adopted in the Phase II Order[32] and seeks comment on whether to further delay implementation until January 1, 2005, a year after the former January 1, 2004 effective date.[33] USTA urges the Commission to set accounting and reporting rule modifications to coincide with the beginning of the calendar year for two reasons. First, implementing rule modifications in the middle of a calendar year would unnecessarily burden carriers who would have to report part of their data under the old rules and part under the new rules, and the data reported for the entire calendar year would not be useful since they would reflect two different sets of reporting requirements. Second, the implementation of the rule modifications should be delayed long enough to allow for receipt and consideration of comments in pending proceedings.[34] It would be inefficient for carriers to implement rule modifications that the FCC later eliminates on reconsideration.

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[31] NPRM, para. 5(a).
[32] *See* First Suspension Order, Second Suspension Order, and Third Suspension Order. The following rule changes were suspended by these orders: (1) consolidation of Accounts 6621 through 6623 into Account 6620, with sub-accounts for wholesale and retail; (2) consolidation of Account 5230, Directory Revenue, into Account 5200, Miscellaneous Revenue; (3) consolidation of the depreciation and amortization expense accounts (Accounts 6561 through 6565) into Account 6562, Depreciation and Amortization Expenses; and (4) revised "Loop Sheath Kilometers" data collection in Table II of ARMIS Report 43-07.
[33] NPRM, para. 8.
[34] *See, e.g., 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II; Amendment to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, Petition of BellSouth, SBC

## IV. Regulatory Accounting Requirements Should be Tailored to the Type of Regulation to which a Company is Subject and to the Company's Size

The accounting system under which a carrier should operate should be based on the manner in which the carrier is regulated. More specifically, the accounting practices required for ILECs should conform to the different ways in which they are regulated. For example, price-cap regulation no longer relies on booked costs. In other words, the link between booked costs and rates has been severed so that rates of price-cap carriers do not vary when their booked costs vary. Accordingly, price-cap carriers should be subject to substantially fewer regulatory accounting requirements than they are today. Ideally, price-cap carriers should be required to report only the same critical accounting information that all non-ILEC providers of telecommunications services report (e.g., information required in Forms 499 and 477). At a minimum, large price-cap carriers should be subject to regulatory accounting requirements that are no more than those to which mid-sized price-cap carriers are currently subject. In addition, mid-sized price-cap carriers should be subject to no more accounting regulations than they already are.[35] Such a reduction in regulatory burdens for large price-cap carriers would be a significant improvement.

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and Verizon for Reconsideration on Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286 (filed March 8, 2002).

[35] USTA urges the Commission to refrain from imposing any additional regulatory accounting requirements on mid-sized price-cap carriers (two percent carriers). The imposition of any additional requirements would force these carriers to divert resources to comply with reporting requirements while their resources would be better spent servicing customers and competing for customers in the market. Notably, regulatory accounting relief provided to two percent carriers in the Phase II Order resulted in no improprieties that would justify additional regulatory accounting requirements. The same holds true for larger price-cap carriers: there is no evidence that the regulatory accounting relief afforded to them in the Phase II Order has resulted in any improprieties that would justify additional regulatory accounting requirements.

The competitive environment under which most telecommunications carriers operate should determine the accounting practices to which those carriers are subject. Moreover, in a competitive environment, no carrier should be required to provide information to regulators that is not critical to ensure that facilities are adequate and charges are reasonable. The reduction and streamlining of accounting regulations that occurred in the Phase II Order were important steps in reducing the regulatory accounting requirements of price-cap carriers according to the manner in which these carriers are currently regulated. Further reductions and streamlining of accounting regulations are necessary, and the Commission should proceed with those efforts in Phase III of the accounting proceeding. As the telecommunications marketplace becomes more competitive, ILECs cannot continue to bear the burden of regulatory accounting requirements to which their competitors are not subject. ILECs should not be the only carriers required to operate under regulatory accounting requirements while all others are permitted to follow GAAP.

## CONCLUSION

If the FCC cannot demonstrate that a rule is necessary to effectuate a federal need, it must eliminate that rule. There is no need to revisit now what the FCC has already made clear regarding the elimination and streamlining of certain rules in the Phase II Order in compliance with the goals of the Act. If the FCC fosters reasoned discourse among state and federal regulators to promote continued reform – elimination and streamlining – of regulatory accounting requirements, the Act's goals of promoting competition and reducing regulation will be advanced, and ILECs will obtain necessary and promised relief.

For the foregoing reasons, USTA urges the FCC to refrain from reinstating or reconsidering regulatory accounting requirements that it previously eliminated or streamlined or adding new regulatory accounting requirements and to move forward with Phase III of the proceeding.

Respectfully submitted,

**UNITED STATES TELECOM ASSOCIATION**

By:________________________

Indra Sehdev Chalk
Michael T. McMenamin
Robin E. Tuttle

Its Attorneys

1401 H Street, NW, Suite 600
Washington, D.C. 20005
(202) 326-7300

January 30, 2004

CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on January 30, 2004, the aforementioned Comments of the United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and were electronically mailed to the following:

Tamara Press
Division Chief
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Tamara.preiss@fcc.gov

Qualex International
Portals II
445 12th Street SW
CY-B402
Washington, DC  20554
qualexint@aol.com

By:/sd/___________________________
Meena Joshi